

## CERTIFICATES AND FRANCHISES

### Ch. 2

## § 40-287

assets, except upon ground that utility is not in fact terminating its functions in service of its customers. Id.

### 5. Municipalities

In approving any sale under § 40-285, state corporation commission must give effect to § 9-516(C), to extent that it shall protect from encroachment by additional certification rights of holder of certificate of convenience and necessity of utility being purchased and can only terminate certificate of the privately owned public utility purchased and relieve it from duties of a public service corporation after it is apparent that municipal corporation has not and will not refuse to provide utility service to a portion or part of area or territory previous-

ly authorized to the public utility. Op.Atty. Gen.No.62-7.

Where municipality acquires assets of private public service corporation through purchase, private utility must voluntarily agree to sell to the municipality, and municipality is on notice as to requirement under this section that public service corporation must obtain permission from state corporation commission to sell, and they are bound to honor order made by commission in approving sale. Id.

If municipality purchasing public utility refuses to serve customers in area taken over, state corporation commission can issue a new certificate of convenience and necessity to a public utility to provide service to that portion of the area or territory. Id.

### § 40-285.01. Renumbered as § 40-286

### § 40-286. Exemption from antitrust statutes

The provisions of title 44, chapter 10, article 1, shall not apply to any conduct or activity of a public service corporation holding a certificate of public convenience and necessity granted pursuant to this article, which conduct or activity is approved by a statute of this state or of the United States or by the corporation commission or an administrative agency of this state or of the United States having jurisdiction of the subject matter.

Added as § 40-285.01 by Laws 1974, Ch. 26, § 5.

#### Historical Note

##### Reviser's Note:

This section added by Laws 1974, Ch. 26, § 5 as § 40-285.01 was renumbered as § 40-286 pursuant to authority of § 41-1304.02.

Also the internal reference to Title 44, chapter 10, article 1.1, Arizona Revised Statutes, was changed to conform to the renumbered unit of reference and citation style arrangement pursuant to authority of § 41-1304.02.

### § 40-287. Value of certificated area

Any portion of the certificated area of a private water company which does not contain an operating distribution system owned by the private water company primarily for the distribution of domestic water is presumed to have de minimis value for the purposes of condemnation.

Added as § 45-579 by Laws 1980, 4th S.S., Ch. 1, § 86, eff. June 12, 1980. Renumbered as § 40-287.

**§ 40-287**

**PUBLIC UTILITIES & CARRIERS**  
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**Historical Note**

For impairment of obligations provision of Laws 1980, Ch. 1, § 166, effective June 12, 1980, see Historical Note preceding § 45-401.

2, article 4 as section 40-287, pursuant to authority of section 41-1304.02.

**1980 Reviser's Note:**

Section 45-579 was transferred and re-numbered for placement in title 40, chapter

**ARTICLE 5. STOCKS AND BONDS**

**§ 40-301. Issuance of stocks and bonds; authorized purposes**

A. The power of public service corporations to issue stocks and stock certificates, bonds, notes and other evidences of indebtedness, and to create liens on their property located within this state is a special privilege, the right of supervision, restriction and control of which is vested in the state, and such power shall be exercised as provided by law and under rules, regulations and orders of the commission.

B. A public service corporation may issue stocks and stock certificates, bonds, notes and other evidences of indebtedness payable at periods of more than twelve months after the date thereof, only when authorized by an order of the commission.

C. The commission shall not make any order or supplemental order granting any application as provided by this article unless it finds that such issue is for lawful purposes which are within the corporate powers of the applicant, are compatible with the public interest, with sound financial practices, and with the proper performance by the applicant of service as a public service corporation and will not impair its ability to perform that service.

D. The provisions of this article shall not apply to foreign public service corporations providing communications service within this state whose physical facilities are also used in providing communications service in interstate commerce.

Amended by Laws 1971, Ch. 122, § 1.

**Historical Note**

**Source:**

Laws 1912, Ch. 90, § 52.

Civ.Code 1913, § 2328.

Rev.Code 1928, § 708.

Code 1939, § 69-237.

The 1971 amendment substituted "rules, regulations and orders of the commission" for "rules and regulations the commission prescribes" in subsec. A; and in subsec. B, substituted "only when authorized by an order of the commission" for "for the fol-

lowing purposes and no other" in the introductory paragraph and deleted pars. 1 to 6, which had read:

"1. Acquisition of property.

"2. Construction, completion, extension or improvement of facilities.

"3. Improvement or maintenance of service.

"4. Discharge or lawful refunding of obligations.

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"5. Reimbursement of monies actually expended from income or from any other monies in the treasury not secured by or obtained from the issue of stocks or stock certificates, or bonds, notes or other evidence of indebtedness of the public service corporation, within five years next prior to filing an application with the commission for the required authorization.

"6. Any of the purposes set forth in paragraphs 1 through 5 of this subsection,

except maintenance of service and replacements, if the applicant has kept its accounts and vouchers for expenditures in a manner which enables the commission to ascertain the amounts so expended and the purposes for which the expenditures were made."

The 1971 amendment also added subsec. C and D.

### Library References

Public Utilities §117.  
C.J.S. Public Utilities § 72.

### Notes of Decisions

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#### 1. In general

Where proposed contract with electric cooperative was rejected by corporation commission under supposition that it involved an area of service outside territory in which cooperative was authorized to operate, and under decision of Supreme Court the basis for commission's decision had been rendered untenable, and commission found no other or valid reason to disapprove the contract, cooperative was entitled to have contract approved. *Application of Trico Elec. Co-op., Inc.* (1963) 92 Ariz. 373, 377 P.2d 309.

In action to rescind agreements and recover amount found due under an accounting, where agreements provided for transfer of owner's interest in electric utility to retail dealer as trustee for purpose of permitting dealer to sell and owner to buy necessary machinery and equipment which would be paid for with proceeds of the business, judgment which impressed a lien upon the machinery and equipment furnished by dealer, and directed that all such property and the utility be sold as a going

concern to satisfy the lien, was not violative of provision of this section or of an order of the corporation commission limiting amount to be borrowed for construction purposes. *Fish v. Valley Nat. Bank of Phoenix* (1946) 64 Ariz. 164, 167 P.2d 107.

Arizona corporation commission lacked authority to compel Arizona public service corporations to purchase fuel oil cooperatively or jointly. *Op. Atty. Gen. No. 179-99.*

#### 2. Stock transfers

Corporation commission, in assuming the power of transferring stock in a corporate motor carrier holding a certificate of public convenience and necessity, acted in excess of its jurisdiction by exercising a power granted by Legislature exclusively to corporate carrier in direct and material interference with carrier's business and its relationship with its stockholders. *Corporation Commission v. Consolidated Stage Co.* (1945) 63 Ariz. 257, 161 P.2d 110.

#### 3. Foreign corporations

Foreign corporation engaged in interstate commerce need not secure corporation commission's consent or approval to issue stocks and stock certificates, bonds, notes, or other evidences of indebtedness. *Op. Atty. Gen. No. 69-10.*

**§ 40-302. Order authorizing issuance of stocks, bonds or other evidences of debt; hearing on application to issue; amount of issue; issuance of short term notes without commission order; capitalization of certain items prohibited; accounting for proceeds of issues**

**A. Before a public service corporation issues stocks and stock certificates, bonds, notes and other evidences of indebtedness, it shall first**

secure from the commission an order authorizing such issue and stating the amount thereof, the purposes to which the issue or proceeds thereof are to be applied, and that, in the opinion of the commission, the issue is reasonably necessary or appropriate for the purposes specified in the order, pursuant to § 40-301, and that, except as otherwise permitted in the order, such purposes are not, wholly or in part, reasonably chargeable to operative expenses or to income. Before an order is issued under this section, notice of the filing of the application for such order shall be given by the commission or the applicant in such form and manner as the commission deems appropriate. The commission may hold a hearing, and make inquiry or investigation, and examine witnesses, books, papers and documents, and require filing data it deems of assistance.

B. The commission may grant or refuse permission for the issue of evidences of indebtedness or grant the permission to issue them in a lesser amount, and may attach to its permission conditions it deems reasonable and necessary. The commission may authorize issues less than, equivalent to or greater than the authorized or subscribed capital stock of the corporation, and the provisions of the general laws of the state with reference thereto have no application to public service corporations.

C. A public service corporation shall not, without consent of the commission, apply the issue of any stock or stock certificate, bond, note or other evidence of indebtedness, or any part thereof, or any proceeds thereof, to any purpose not specified in the commission's order, or to any purpose specified in the commission's order in excess of the amount authorized for the purpose, or issue or dispose of the proceeds of such issuance on any terms less favorable than those specified in the order.

D. A public service corporation may issue notes, not exceeding seven per cent of total capitalization if operating revenues exceed two hundred fifty thousand dollars, for proper purposes and not in violation of law payable at periods of not more than twelve months after date of issuance, without consent of the commission, but no such note shall, wholly or in part, be refunded by any issue of stocks or stock certificates, bonds, notes or any other evidence of indebtedness without consent of the commission.

E. The commission may not authorize the capitalization of the corporate franchise, or of any franchise or permit whatever, or the right to own, operate or enjoy any such franchise or permit, in excess of the amount, exclusive of taxes or annual charges, actually paid to the state or to a political subdivision thereof as the consideration for the grant of the franchise, permit or right, nor shall any contract for consolidation or lease be capitalized, nor shall any public service corporation issue any bonds, notes or other evidences of indebtedness against or as a lien upon any contract for consolidation or merger.

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**§ 40-303**

F. The commission may require public service corporations to account for the disposition of the proceeds of all sales of stocks and stock certificates, bonds, notes and other evidences of indebtedness, in the form and detail it deems advisable, and may establish rules and regulations it deems reasonable and necessary to insure the disposition of such proceeds for the purpose specified in its order.

Amended by Laws 1971, Ch. 122, § 2; Laws 1976, Ch. 44, § 1.

**Historical Note**

**Source:**

Laws 1912, Ch. 90, § 52.  
Civ.Code 1913, § 2328.  
Rev.Code 1928, § 708.  
Code 1939, § 69-237.

The 1971 amendment rewrote subsec. A, which had read:

"A. Before a public service corporation issues stocks and stock certificates, bonds, notes and other evidences of indebtedness, it shall first secure from the commission an order authorizing such issue and stating the amount thereof, the purpose to which the issue or proceeds thereof are to be applied, and that, in the opinion of the commission, the money, property or labor to be procured

or paid for by the issue is reasonably required for the purpose specified in the order, and that, except as otherwise permitted in the order in the case of bonds, notes or other evidences of indebtedness, the purposes are not, wholly or in part, reasonably chargeable to operative expenses or to income. The commission shall hold a hearing, and may make inquiry or investigation, and examine witnesses, books, papers and documents, and require filing data it deems of assistance."

The 1976 amendment inserted "not exceeding seven per cent of total capitalization if operating revenues exceed two hundred fifty thousand dollars" in subsec. D.

**Cross References**

Agricultural improvement district revenue bonds, issuance, see § 48-2465.

**Library References**

Public Utilities 4-117.  
C.J.S. Public Utilities § 72.

**Notes of Decisions**

**1. In general**

In regard to sale of securities, provision of § 44-1843(5), exempting securities issued

or guaranteed either as to principal, interest or dividend by a railroad or public utility, public service corporations were exempt. Op.Atty.Gen.No.59-24.

**§ 40-303. Validity of stock certificates or evidences of indebtedness; violation of law or commission authorizations; classification**

A. All stock and every stock certificate, and every bond, note or other evidence of indebtedness of a public service corporation, issued without a valid order of the commission authorizing the issue, or if issued with the authorization of the commission but not conforming to the order of authorization of the commission, is void, but no failure in any other respect to comply with the terms or conditions of the order of authorization of the commission shall make the issue void, except as to a person

taking the issue other than in good faith and for value and without actual notice.

B. Every public service corporation which, directly or indirectly, issues or causes to be issued any stock or stock certificate, bond, note or other evidence of indebtedness not in conformity with the order of the commission authorizing the issue, or contrary to law, or which applies proceeds from the sale thereof, or any part thereof, to any purpose other than the purpose specified in the commission order, or to any purpose specified in the order in excess of the amount in the order authorized for such purpose, is subject to a penalty of not less than five hundred nor more than twenty thousand dollars for each offense.

C. A person is guilty of a class 4 felony who:

1. Knowingly authorizes, directs, aids in, issues or executes any stock or stock certificate, bond, note or other evidence of indebtedness not in conformity with the order of the commission authorizing such, or contrary to law.

2. In any proceeding before the commission knowingly makes any false statement or representation, or, with knowledge of its falsity, files or causes to be filed with the commission any false statement or representation, which may tend to influence the commission to make an order authorizing the issue of any stock or stock certificate, bond, note or other evidence of indebtedness, or which results in procuring from the commission the making of any such order.

3. With knowledge that any false statement or representation was made to the commission in any proceeding tending in any way to influence the commission to make such order, issues, executes or negotiates, or causes to be issued, executed or negotiated any stock or stock certificate, bond, note or other evidence of indebtedness.

4. Directly or indirectly, knowingly applies, or causes or assists to be applied the proceeds or any part thereof, from the sale of any stock or stock certificate, bond, note or other evidence of indebtedness, to any purpose not specified in the commission order or to any purpose in excess of the amount authorized for such purpose.

5. With knowledge that any stock or stock certificate, bond, note or other evidence of indebtedness has been issued or executed in violation of any of the provisions of this article, negotiates, or causes the same to be negotiated.

Amended by Laws 1978, Ch. 201, § 697, eff. Oct. 1, 1978.

Historical Note

Source:

Laws 1912, Ch. 90, § 52.  
Civ. Code 1913, § 2328.

Rev. Code 1928, § 708.  
Code 1939, § 69-237.

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**§ 40-321**

The 1978 amendment substituted "class 4 felony who" for "felony punishable by imprisonment for not less than two years and not more than ten years, who" in the introductory paragraph of subsec. C.

For effective date provision and application of Laws 1978, Ch. 201, see Historical Note following § 1-215.

**Cross References**

Classification of offenses, see § 13-601 et seq.  
Fines, see § 13-801 et seq.  
Offenses, culpable mental state, see § 13-105.  
Sentences of imprisonment, see § 13-701 et seq.

**Library References**

Public Utilities ¶117.  
C.J.S. Public Utilities § 72.

**ARTICLE 6. SERVICE AND FACILITIES**

**§ 40-321. Power of commission to determine adequacy of service rendered by public service corporation; enforcement by order or regulation; duty of compliance by corporation**

A. When the commission finds that the equipment, appliances, facilities or service of any public service corporation, or the methods of manufacture, distribution, transmission, storage or supply employed by it are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commission shall determine what is just, reasonable, safe, proper, adequate or sufficient, and shall enforce its determination by order or regulation.

B. The commission shall prescribe regulations for the performance of any service or the furnishing of any commodity and upon proper demand and tender of rates, the public service corporation shall furnish the commodity or render the service within the time and upon the conditions prescribed.

**Historical Note**

**Source:**  
Laws 1912, Ch. 90, § 35.  
Civ.Code 1913, § 2311.

Rev.Code 1928, § 692.  
Code 1939, § 69-221.

**Cross References**

Powers of the commission, generally, see § 40-202; Const. Art. 15, §§ 3 to 6.

**Administrative Code References**

Electric utilities, provision of service, meter reading, billing, and termination of service, see A.C.R.R. R14-2-208 et seq.  
Gas utilities, establishment of service, metering, billing and termination of service, see A.C.R.R. R14-2-303 et seq.

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**§ 40-361**

**Library References**

Electricity ⚡21.  
C.J.S. Electricity §§ 76, 77.

**§ 40-360.45. Exemptions**

This article does not apply to construction, reconstruction, operation or maintenance by an authorized person of overhead electrical or communication circuits or conductors and their supporting structures or electrical generating, transmission or distribution systems or communication systems or off-premises outdoor advertising signs during maintenance. Added by Laws 1980, Ch. 125, § 1.

**Library References**

Electricity ⚡1, 4, 9(1 to 5).  
C.J.S. Electricity §§ 1 et seq., 11 et seq.,  
39 to 41, 50.

**ARTICLE 7. RATES AND RATE SCHEDULES**

**§ 40-361. Charges by public service corporations required to be just and reasonable; service and facilities required to be adequate, efficient and reasonable; rules and regulations relating to charges or service required to be just and reasonable**

A. Charges demanded or received by a public service corporation for any commodity or service shall be just and reasonable. Every unjust or unreasonable charge demanded or received is prohibited and unlawful.

B. Every public service corporation shall furnish and maintain such service, equipment and facilities as will promote the safety, health, comfort and convenience of its patrons, employees and the public, and as will be in all respects adequate, efficient and reasonable.

C. All rules and regulations made by a public service corporation affecting or pertaining to its charges or service to the public shall be just and reasonable.

**Historical Note**

**Source:**  
Laws 1912, Ch. 9, § 13.  
Civ.Code 1913, § 2289.

Rev.Code 1928, § 674.  
Code 1939, § 69-202.

**Cross References**

Change in rates, hearing, see § 40-250.  
Demurrage charges, requirements for uniformity, see § 40-323.  
Discrimination in rates prohibited, see §§ 40-333 and 40-334.  
Joint rates between telecommunications corporations, power of commission to order, see § 40-329.



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### Note 8

protect individual citizens of town against fire. *Id.*

### 9. Estoppel

Fact that owner of a water system did not produce any evidence as to value of property before a state commission, which subsequently made an order fixing rates to be charged to customers of such system, did not estop him to deny fairness of the valuation made by the commission, or to claim that the rates made were confiscatory. *Van Dyke v. Geary* (D.C.1914) 218 F. 111, affirmed 37 S.Ct. 483, 244 U.S. 39, 61 L.Ed. 973.

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### 10. Evidence

Evidence was not sufficient to show that a state commission, in fixing value of a water system, omitted any element of substantial value, or that water rates fixed by the commission were so low as to be confiscatory. *Van Dyke v. Geary* (D.C.1914) 218 F. 111, affirmed 37 S.Ct. 483, 244 U.S. 39, 61 L.Ed. 973.

In an action to recover an alleged excess above a reasonable price for water furnished by an irrigation company, what is a reasonable price is a fact to be proved as other facts are proved. *Salt River Valley Canal Co. v. Nelssen* (1906) 10 Ariz. 9, 85 P. 117, 12 L.R.A.,N.S., 711, 16 Ann.Cas. 796.

## § 40-362. Power of commission to investigate interstate rates

A. The commission may investigate all existing or proposed interstate rates, fares, tolls, charges and classifications, and all rules and practices in relation thereto, for or in relation to the transmission of messages or conversations, where any act in relation thereto takes place within this state.

B. When the proposed or existing rates are excessive or discriminatory, or in violation of the acts of Congress, or in conflict with the orders or regulations of the Interstate Commerce Commission, the commission may apply to the Interstate Commerce Commission or to any court of competent jurisdiction for relief.

Amended by Laws 1983, Ch. 61, § 5.

### Historical Note

#### Source:

Laws 1912, Ch. 90, § 34.  
Civ.Code 1913, § 2310.  
Rev.Code 1928, § 691.  
Code 1939, § 69-220.

The 1983 amendment deleted "transportation of persons or property or the" following "for or in relation to the".

For purpose of Laws 1983, Ch. 61, see Historical Note following § 9-519.

### Cross References

Powers of commission, generally, see Const. Art. 15, § 3.

### Library References

Public Service Commissions ⇐145.  
C.J.S. Public Utilities §§ 18, 65 to 67.

## §§ 40-363, 40-364. Repealed by Laws 1983, Ch. 61, § 2

### Historical Note

For purpose of Laws 1983, Ch. 61, see Historical Note following § 9-519.

Section 40-363, which prohibited a common carrier from transporting persons or

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## § 40-365

property until its rates and charges were filed and published, was derived from:

Laws 1912, Ch. 90, § 17.  
Civ.Code 1913, § 2293.  
Laws 1921, Ch. 14, § 1.  
Laws 1923, Ch. 34, § 1.  
Rev.Code 1928, § 678.  
Code 1939, § 69-206.

Section 40-364, which distinguished an "industrial railroad" from a common carrier, was derived from:

Rev.Code 1928, § 678a.  
Laws 1933, Ch. 64, § 1.  
Code 1939, § 69-207.

### § 40-365. Filing of rate schedules by public service corporations

Under rules and regulations the commission prescribes, every public service corporation shall file with the commission, and shall print and keep open to public inspection, schedules showing all rates, tolls, rentals, charges and classifications to be collected or enforced, together with all rules, regulations, contracts, privileges and facilities which in any manner affect or relate to rates, tolls, rentals, classifications or service. The commission may, from time to time, approve or fix rates, tolls, rentals or charges in excess of or less than those shown by the schedules. The commission may, from time to time, determine and prescribe by order such changes in the form of the schedules as it finds expedient, and modify the requirements of any of its orders, rules, or regulations. Amended by Laws 1983, Ch. 61, § 6.

#### Historical Note

##### Source:

Laws 1912, Ch. 90, § 14.  
Civ.Code 1913, § 2290.  
Rev.Code 1928, § 675.  
Code 1939, §§ 69-203.

The 1983 amendment rewrote the section, which had read:

"A. Every common carrier shall file with the commission and shall print and keep available to the public schedules showing the rates, fares, charges and classifications for transportation between termini within this state of persons and property:

"1. From each point upon its route to all other points thereon.

"2. From each point upon its route to all points upon every other route leased, operated or controlled by it.

"3. From each point on its route or upon any route leased, operated or controlled by it to all points upon the route of any other common carrier, when a through route and a joint rate has been established or ordered between any two such points. If no joint rate over a through route has been established, the schedules of the several carriers for the through route shall show the separately established rates, fares, charges and

classifications applicable to the through transportation.

"B. The schedules shall plainly state the places between which property and persons will be carried, and the classification of passengers or property in force, and shall also state separately all terminal, storage or icing charges and all other charges which the commission may require to be stated, all privileges or facilities granted or allowed, and all rules or regulations which may in any way change, affect or determine any part or the aggregate of the rates, fares, charges, and classifications or the value of the service rendered to the passenger, shipper or consignee.

"C. The schedules shall be plainly printed in large type, and a copy thereof shall be kept by every carrier readily accessible for inspection by the public in every station or office of the carrier where passengers or property are received for transportation when the station or office is in charge of an agent, and in every station or office of the carrier where passenger tickets, or ticket for sleeping, parlor car or other train accommodations are sold, or bills of lading, way bills or receipts for property are issued. The schedules shall be produced by

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by state corporation commission. Southern  
Pac. Co. v. Arizona Corp. Commission (1965)  
98 Ariz. 339, 404 P.2d 692.

#### **§ 40-366. Names of parties to joint schedule required on schedule; filing required by only one party with concurrence of other parties**

A. The names of the several public service corporations which are parties to any joint tariff, rate, fare, toll, contract, classification or charge shall be specified in each schedule showing such items.

B. Unless otherwise ordered by the commission, a schedule showing a joint tariff, rate, fare, toll, contract, classification or charge need be filed with the commission by only one of the parties to it, provided that there is also filed with the commission, in the form the commission requires, a concurrence in the joint tariff, rate, toll, fare, contract, classification or charge by each of the other parties thereto.

#### **Historical Note**

**Source:**

Laws 1912, Ch. 90, § 16.  
Civ.Code 1913, § 2292.

Rev.Code 1928, § 677.  
Code 1939, § 69-205.

#### **§ 40-367. Changes of rates; notice; filing; exception**

A. No change shall be made by any public service corporation in any rate, fare, toll, rental, charge or classification, or in any rule, regulation or contract relating to or affecting any rate, toll, fare, rental, charge, classification or service, or in any privilege or facility, except after thirty days notice to the commission and to the public as provided in this chapter.

B. Notice shall be given by filing with the commission and keeping open for public inspection new schedules stating plainly the change to be made in the schedules then in force, and the time when the change will go into effect.

C. The commission, for good cause shown, may allow changes without requiring the thirty days notice provided for in this section by an order specifying the changes so to be made and the time when they shall take effect, and the manner in which they shall be filed and published.

D. When any change is proposed attention shall be directed to the change on the schedule filed with the commission by some mark, designated by the commission, immediately preceding or following the item.

#### **Historical Note**

**Source:**

Laws 1912, Ch. 90, § 15.

Civ.Code 1913, § 2291.

§ 40-368. Sliding scale of charges

*Text of section pending constitutional amendment*

A. Any person engaged in the production, generation, transmission or furnishing of heat, cold air, light, sewer service, water or power, or telegraph or telephone service, may establish a sliding scale of charges and may enter into an arrangement for a fixed period for the automatic adjustment of charges for heat, cold air, light, sewer service, water, or power, or telegraph or telephone service, in relation to the profit to be realized by such person. A schedule showing the scale of charges under such arrangement shall first be filed with the commission and the schedule and each rate set out therein approved by it.

B. The commission may revoke its approval at any time and fix other rates and charges for the product or commodity or service, as authorized in this chapter.

Amended by Laws 1984, Ch. 40, § 3.

*For text of conditional amendment, see § 40-368, post.*

§ 40-368. Sliding scale of charges

*Text of constitutional amendment*

A. Any person engaged in the production, generation, transmission or furnishing of heat, cold air, light, sewer service, water or power, or telecommunications service may establish a sliding scale of charges and may enter into an arrangement for a fixed period for the automatic adjustment of charges for heat, cold air, light, sewer service, water, or power, or telecommunications service, in relation to the profit to be realized by such person. A schedule showing the scale of charges under such arrangement shall first be filed with the commission and the schedule and each rate set out therein approved by it.

B. The commission may revoke its approval at any time and fix other rates and charges for the product or commodity or service, as authorized in this chapter.

Amended by Laws 1984, Ch. 40, § 3; Laws 1985, Ch. 304, § 11.

*For text of section pending constitutional amendment, see § 40-368, ante.*

**Historical Note**

**Source:**

Laws 1912, Ch. 90, § 21.

Civ.Code 1913, § 2297.

Rev.Code 1928, § 680.

Code 1939, § 69-209.

The 1984 amendment inserted "sewer service," twice and deleted a comma following "sliding scale of charges" in the first sentence of subsec. A.

The 1985 amendment substituted "telecommunications service" for "telegraph and

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telephone service" in two places in the first sentence of subsec. A; and, in the same sentence, deleted a comma preceding "may establish".

For legislative intent, savings clause, conditional enactment, and effective date provisions of Laws 1985, Ch. 304, see Historical Note following § 40-201.

Law Review Commentaries

Electric utility lifeline rates. Ariz.State L.J. 4, 1978, p. 641.

Utility rate schedules, automatic adjustment clauses, due process restraints. 18 Ariz.L.Rev. 453 (1976).

Note of Decisions

1. In general

Arizona corporation commission has jurisdiction to authorize the use, by electric and

gas corporations under its jurisdiction, of automatic adjustment, or escalator, clauses. Op.Atty.Gen. No.71-15.

§ 40-369. Limitations on relative charges by telephone and telegraph companies for long and short distance messages

*Text of section pending constitutional amendment*

A. A telephone or telegraph corporation shall not charge or receive any greater compensation in the aggregate for transmission of a long distance message or conversation for a shorter than for a longer distance over the same line or route in the same direction within this state, the shorter being included within the longer distance, or charge any greater compensation for a through service than the aggregate of the intermediate rates or tolls subject to the provisions of this chapter. The provisions of this section shall not be construed as authorizing any such corporation to charge and receive as great a compensation for a shorter as for a longer distance service.

B. Upon application to the commission, a telephone or telegraph corporation may, in special cases after investigation, be authorized by the commission to charge less for a longer than for a shorter distance service for the transmission of messages or conversations, and the commission may from time to time prescribe the extent to which the corporation may be relieved from the operation and requirements of this section.

*For text of conditional amendment, see § 40-369, post.*

§ 40-369. Limitations on relative charges by telecommunications corporations for long-distance and short-distance messages

*Text of constitutional amendment*

A. A telecommunications corporation shall not charge or receive any greater compensation in the aggregate for transmission of a long-distance message or conversation for a shorter than for a longer distance over the same line or route in the same direction within this state, the shorter being included within the longer distance, or charge any greater

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**RATES AND RATE SCHEDULES**  
**Ch. 2**

**§ 40-374**

within the corporate limits of any city or town, except upon a showing before the commission that a greater charge is justified.

**B.** Every street or interurban railroad shall upon such terms the commission finds just and reasonable furnish to its passengers transfers entitling them to one continuous trip in the same general direction over and upon the portions of its lines not reached by the originating car.

**Historical Note**

**Source:**

Laws 1912, Ch. 90, § 27.  
Civ.Code 1913, § 2303.  
Rev.Code 1928, § 686.  
Code 1939, § 69-215.  
Laws 1972, Ch. 87, § 95 amended this section upon the condition that the Arizona

constitution be amended to abolish the corporation commission and create a public utilities commission. The proposed amendment to which Laws 1972, Ch. 87 referred was rejected by the electorate. See Historical Note following § 40-101.

**Library References**

Carriers ⇨12(4).  
Urban Railroads ⇨22.

C.J.S. Carriers §§ 567, 582.  
C.J.S. Street Railroads §§ 160 to 176.

**§ 40-373. Permitting or obtaining transportation at less than schedule rates prohibited**

**A.** A common carrier shall not, by means of known false billing, classification, weight, weighing or report of weight, or by any other device or means, assist, suffer or permit any person to obtain transportation for any person or property between points within this state at less than the rates and fares then established and in force as shown by the schedules filed and in effect at the time.

**B.** No person shall by means of false billing, false or incorrect classification, false weight or weighing, false representation as to contents or substance of a package, or false report or statement of weight, or by any other device or means, whether with or without the consent or connivance of a common carrier, seek to obtain or obtain transportation for such person or property at less than the rates then established and in force therefor.

**Historical Note**

**Source:**

Laws 1912, Ch. 90, § 23.  
Civ.Code 1913, § 2299.

Rev.Code 1928, § 682.  
Code 1939, § 69-211.

**§ 40-374. Prohibition of rebates and agreements**

Except as otherwise provided in this chapter, no public service corporation shall charge, demand, collect or receive a greater, less, or different compensation for transportation of persons or property, or for any product or commodity, or for any service rendered in connection there-

with, than the rates, fares, tolls, rentals and charges applicable to such transportation or product, commodity or service specified in its schedule on file and in effect at the time, nor shall any public service corporation refund or remit, directly or indirectly, in any manner or by any device, any part of the rates, fares, tolls, rentals and charges so specified, nor extend to any person any form of contract, agreement, or any rule or regulation, or any facility or privilege, except such as are regularly and uniformly extended to all persons and except upon order of the commission.

#### Historical Note

##### Source:

Laws 1912, Ch. 90, § 17.  
Civ.Code 1913, § 2293.  
Laws 1921, Ch. 14, § 1.

Laws 1923, Ch. 34, § 1.  
Rev.Code 1928, § 678.  
Code 1939, § 69-206.

#### Law Review Commentaries

Racial segregation, Plessy v. Ferguson.  
Paul Oberst, 15 Ariz.Law Rev. 389 (1973).

#### Library References

Carriers ⇐13(1).  
Electricity ⇐11.5(1).  
Gas ⇐14.1(2).  
Public Utilities ⇐123.  
Telecommunications ⇐347.  
Waters and Water Courses ⇐203(3).  
C.J.S. Carriers § 348 et seq.

C.J.S. Electricity § 35.  
C.J.S. Gas § 30.  
C.J.S. Public Utilities §§ 19, 34, 48, 56.  
C.J.S. Telegraphs, Telephones, Radio, and  
Television § 95.  
C.J.S. Waters § 297.

#### Notes of Decisions

##### 1. In general

Carrier must charge same rate for same service, regardless of reasons for shipment or commodity's ability to stand charges. Southern Pac. Co. v. State Corporation Commission (1931) 39 Ariz. 1, 3 P.2d 518.

A shipper must be charged the applicable published rate regardless of any agreement to the contrary with the common carrier. Op.Atty.Gen. No. 179-9.

#### § 40-375. Fraudulent means or attempts to obtain rebate or damage prohibited

No person shall knowingly, directly or indirectly, by any false statement or representation as to cost or value, or the nature or extent of damage, or by the use of any false billing, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit or deposition, or upon any false, fictitious or fraudulent statement or entry, obtain or attempt to obtain any allowance, rebate or payment for damage in connection with or growing out of the transportation of persons or property, or an agreement to transport persons or property, whether with or without the consent or connivance of a common carrier, nor shall any common carrier knowingly pay or offer to pay any such allowance, rebate or claim for damage.

**ANNUAL ASSESSMENTS**  
**Ch. 2**

**§ 40-401**

**Historical Note**

**Source:**

Laws 1912, Ch. 90, § 23.  
Civ.Code 1913, § 2299.  
Rev.Code 1928, § 683.  
Code 1939, § 69-212.

**Reviser's Note:**

Laws 1945, 1st S.S., Ch. 11, §§ 1 to 4  
(69-271 through 69-274, C. '39, Supp. '52)

provided for valuation of the properties of public service corporations furnishing gas or electricity, for establishing a base for rate-making purposes, and further provided for cooperation with the federal power commission by the state corporation commission. The provisions are omitted as unconstitutional. See *Ethington v. Wright*, 66 Ariz. 382, 189 P.2d 209 (1948).

**Library References**

Carriers  $\Leftrightarrow$  22.  
Aeronautics and Aerospace § 230.  
C.J.S. Carriers §§ 523 et seq., 650.

**Notes of Decisions**

**In general 2**

**Validity of related laws 1**

**1. Validity of related laws**

Provision of Laws 1945, 1st S.S., Ch. 11, § 1(a) relating to public utilities that, as soon as practicable after the act should take effect, corporation commission should ascertain fair value of property of public service corporations in state furnishing gas or electricity for profit, for purpose of establishing a base for rate-making purposes, violated provision of Const. Art. 15, § 14 that the commission shall ascertain the fair value of property within the state of every public service corporation doing business

within the state, and because such unconstitutional portion was inseparable from the constitutional portions of the act, the entire act was invalidated. *Ethington v. Wright* (1948) 66 Ariz. 382, 189 P.2d 209.

**2. In general**

Taxpayers had right in declaratory judgment action to question legality of proposed expenditure under act relating to public utilities, providing for establishment of a rate-making base for public service corporations furnishing gas and electricity, and providing for co-operation of federal power commission, and making an appropriation. *Ethington v. Wright* (1948) 66 Ariz. 382, 189 P.2d 209.

**ARTICLE 8. ANNUAL ASSESSMENTS**

**§ 40-401. Annual assessment by commission against public service corporations; exception; rate of assessment; date of levy; annual statement of company intrastate revenue**

A. To enable the corporation commission to perform its lawful duties relating to classifications to be used, rates and charges to be made and collected, rules and regulations to be prescribed, and supervision over public service corporations, the commission shall annually make an assessment against each such corporation, excepting corporations not required to hold certificates of convenience and necessity.

B. The assessment required pursuant to subsection A of this section shall be prescribed annually by the commission at a rate sufficient to raise monies equal to the amount computed as follows:

1. Determine the amount appropriated by the legislature for operating the utilities division for the following fiscal year.



2. Multiply the amount determined in paragraph 1 by 1.2.

3. Subtract the monies estimated to remain unexpended in the utility regulation revolving fund at the end of the current fiscal year. The difference computed is the amount to be raised by the assessment.

C. The assessment rate prescribed pursuant to subsection B of this section shall be applied to the gross operating revenues derived from intrastate operations during the preceding calendar year of any such corporation if the gross operating revenues of the corporation exceeded two hundred fifty thousand dollars during that preceding calendar year. In no event may the sum of the assessment rates under this section and § 40-401.01 exceed two-tenths of one per cent of any such corporation's gross operating revenues derived from intrastate operations during the preceding calendar year.

D. The assessment prescribed by subsections A and B of this section shall be levied by the commission not later than June 15 and shall be paid within fifteen days after mailing by registered mail to any such corporation notice thereof and a statement of the amount.

E. Each public service corporation with gross operating revenues greater than two hundred fifty thousand dollars shall on or before January 10, file with the commission a statement showing its estimated gross operating revenues derived from intrastate operations during the preceding calendar year.

F. Each public service corporation shall, on or before May 1, file with the commission, under oath, a statement showing its gross operating revenues derived from intrastate operations during the preceding calendar year.

Amended by Laws 1983, Ch. 308, § 7, eff. April 29, 1983; Laws 1985, Ch. 276, § 1.

#### Historical Note

##### Source:

Laws 1947, Ch. 79, § 1.  
Code 1939, Supp. 1952, § 53-109.

Laws 1972, Ch. 87, § 96 amended this section upon the condition that the Arizona constitution be amended to abolish the corporation commission and create a public utilities commission. The proposed amendment to which Laws 1972, Ch. 87 referred was rejected by the electorate. See Historical Note following § 40-101.

The 1983 amendment substituted references to public service corporations for references to electrical, gas, telephone and water corporations in subsections A and E; and rewrote subsection B, which had read:

"B. The assessment shall be equal to one-tenth of one per cent up to two hundred fifty thousand dollars, and two-tenths of one per cent above that amount, of the gross operating revenue of any such corporation derived from intrastate operations during the preceding calendar year."

The 1983 amendment also inserted subsection C; redesignated former subsections C and D as subsections D and E; substituted "subsections A and B of this section shall be levied by the commission not later than June 15" for "subsections A and B shall be levied by the commission not later than the first day of July," in subsection D; and substituted "May 1" for "the first day of June" in subsection E.

Laws 1983, Ch. 308, § 1 provides:

## ANNUAL ASSESSMENTS

§ 40-401.01

### Ch. 2

"In this act, it is the intent of the legislature to allow the corporation commission to use monies from the annual utilities assessment to employ qualified and capable professional staff, including accountants, attorneys, auditors, economists, engineers and statisticians, and to enable the commission to effectively perform its required duties. It is the intent of the legislature to create a

residential utility consumer office to represent the interests of residential utility consumers, critically analyze proposals made by public service corporations to the corporation commission, develop its own recommendations and present them to the commission."

The 1985 amendment inserted subsec. E and relettered former subsec. E as F.

#### Cross References

Utility regulation revolving fund,

Disposition of assessment proceeds, see § 40-408.

Monies not appropriated or expended, use to calculate annual assessment, see § 40-408.

#### Library References

Taxation ¶155, 156, 157, 159.

C.J.S. Taxation §§ 159, 161, 183, 185, 261.

#### Notes of Decisions

##### In general 2

##### Validity of related law 1

##### 1. Validity of related law

Act appropriating \$50,000 to corporation commission to conduct survey to determine fair value of property of public service corporations in order to establish proper base for rate-making purposes, and providing that commission should have survey made by federal power commission, could not have been separated in order to declare one part valid and another part invalid, and therefore alleged fact that portion providing for a survey by federal power commission was invalid did not entitle accountant to have part of statute appropriating \$50,000 held valid and to recover thereunder for services rendered by accountant to commission in connection with a survey. *Millett v. Frohmiller* (1948) 66 Ariz. 339, 188 P.2d 457.

##### 2. In general

Section 35-149 providing that commissions receiving "private funds" shall deposit them with the State Treasurer and the Treasurer shall keep such funds separate,

has no application to provision of this section that to enable corporation commission to perform its lawful duties relating to rates of public utilities, commission shall annually make an assessment against each public utility corporation. *Millett v. Frohmiller* (1948) 66 Ariz. 339, 188 P.2d 457.

Provision of § 40-401 that, to enable corporation commission to perform its lawful duties relating to rates of public utilities, commission shall annually make an assessment against each public utility corporation, did not constitute an "appropriation" creating an available fund to which certified public accountant who had rendered services to the commission in connection with commission's duties in fixing rates of public utilities could look for payment of his claim. *Id.*

Section 40-401 did not authorize assessment of a tax levy against natural gas company which was principally engaged in interstate transportation of natural gas under the Natural Gas Act, 15 U.S.C.A. § 717, even though levy attempted was upon revenues derived from sales "direct" to industrial consumers within state. *Op.Atty.Gen.* No. 64-24.

### § 40-401.01. Residential utility consumer assessment; rate of assessment; date of levy; annual statement of company intrastate revenue

A. To fund the residential utility consumer office the commission shall annually make a residential utility consumer assessment against

**§ 40-401.01**

**PUBLIC UTILITIES & CARRIERS**

**Title 40**

each public service corporation, excepting corporations not required to hold certificates of convenience and necessity.

B. The residential utility consumer assessment required pursuant to subsection A of this section shall be prescribed annually by the commission at a rate sufficient to raise monies equal to the amount computed as follows:

1. Determine the amount appropriated by the legislature for operating the residential utility consumer office for the following fiscal year.

2. Subtract the monies estimated to remain unexpended in the residential utility consumer office revolving fund at the end of the current fiscal year. The difference computed is the amount to be raised by the assessment.

C. The assessment rate prescribed pursuant to subsection B of this section shall be applied to the gross operating revenues derived from intrastate operations serving residential consumers during the preceding calendar year of any such corporation if the gross operating revenues of the corporation exceeded two hundred fifty thousand dollars during that preceding calendar year. In no event may the sum of the assessment rates under this section and § 40-401 exceed two-tenths of one per cent of any such corporation's gross operating revenues derived from intrastate operations during the preceding calendar year.

D. The residential utility consumer assessment prescribed by subsections A and B of this section shall be levied by the commission not later than June 15 and shall be paid within fifteen days after mailing by registered mail to any such corporation notice thereof and a statement of the amount.

E. Each public service corporation shall, on or before May 1, file with the commission, under oath, a statement showing the gross operating revenues derived from intrastate operations during the preceding calendar year that were received from residential consumers.

F. The commission shall promulgate an order defining "residential consumer" for purposes of the residential utility consumer assessment prescribed by this section.

Added by Laws 1983, Ch. 308, § 8, eff. April 29, 1983.

**Historical Note**

For legislative intent of Laws 1983, Ch. 308, see Historical Note following § 40-401.

**Cross References**

Residential utility consumer office revolving fund, disposition of assessment proceeds and balance used in calculation of annual residential utility consumer assessment, see § 40-409.

**Library References**

Taxation ¶155, 156, 157, 159.  
C.J.S. Taxation §§ 159, 161, 183, 185, 261.

**§ 40-402. Findings of fact defined**

Findings of fact of the commission within the meaning of this article shall be:

1. Determinations of fact expressed in statements rendered pursuant to this article.
2. Determinations of fact set out in the minutes of the commission recording the action of the commission in passing upon such statements and upon objections thereto.

**Historical Note**

**Source:**

Laws 1949, Ch. 79, § 7.  
Code 1939, Supp. 1952, § 53-115.

**Notes of Decisions**

**1. In general**

Before proceeding upon statutory cause of action, such as one to enjoin defendants from acting as common or contract carriers

for hire, attorney general should be directed to proceed by some formal action of corporation commission. *Williams v. State ex rel. Smith* (1965) 2 Ariz.App. 291, 408 P.2d 224.

**§ 40-403. Objection to statement of assessment; hearing; notice of findings; compliance by company**

A. Within fifteen days after the date of mailing a statement as provided in this article, the corporation against which the statement is rendered may file with the commission its objections thereto. Not less than five nor more than ten days after giving notice thereof to the objector, the commission shall hold a hearing on the objections.

B. If after the hearing the commission finds any part of the charge against the objecting corporation excessive, erroneous, unlawful or invalid, it shall record its findings upon its minutes and transmit to the objector, by registered mail, an amended statement in accordance with the findings, which shall have the same force and effect as an original statement. If the commission finds the entire statement unlawful or invalid, it shall notify the objector, by registered mail, of such determination, and the original statement shall be null and void. If the commission finds that the statement as rendered is neither excessive, erroneous, unlawful nor invalid, in whole or in part, it shall record such findings upon its minutes, and transmit notice thereof to the objector by registered mail.

C. If a statement against which objections are filed is not paid within ten days after mailing to the objector notice of a finding that the

ARTICLE 1. REGULATION BY CORPORATION COMMISSION

§ 40-201. Definitions

Failure of Conditional Enactment

*Laws 1985, Ch. 304, § 2 conditionally amended this section (see Main Volume). For conditional enactment provision and information as to the nonoccurrence of the condition, see Historical Note post.*

Historical and Statutory Notes

Laws 1985, Ch. 304, providing in § 16 of that chapter that "[t]his act shall not become effective unless the Constitution of Arizona is amended by vote of the people at the next regular general election, or at a special election called for that purpose, to provide for regulation of all corporations other than municipal, providing telecommunications service as prescribed by law", failed to become effective upon the failure of the condition. See, note post.

Telecommunication Corporations

Proposition 100, based on Laws 1985, H.C.R. No. 2007 proposing that Const. Art. 15, §§ 2, 3, 9,

10, and 14 be amended to provide for the regulation of nonmunicipal telecommunication corporations as public service corporations and for a limitation of such regulation, to require statewide availability and affordability of telecommunications service, a statewide telecommunications network, and the transmission of messages by connecting carriers, and to authorize the exception of telecommunication corporation from the property valuation otherwise required of public service corporations, was rejected by the electors at the November 4, 1986 general election as proclaimed by the governor on December 16, 1986.

Cross References

Telecommunications corporation employees, exemption from rules relating to qualification and hours of service of drivers, see § 28-2409.

Notes of Decisions

10. Water systems

Sewage treatment plant's effluent delivered by city for use in copper leaching was not same as "water" provided by water utility for its service

area, and, thus, city was not illegally competing with utility. *Arizona Water Co. v. City of Bisbee* (App.1991) 172 Ariz. 176, 836 P.2d 389.

§ 40-202. Supervising and regulating public service corporations; telecommunications promotion; duty to comply

A. The commission may supervise and regulate every public service corporation in the state and do all things, whether specifically designated in this title or in addition thereto, necessary and convenient in the exercise of such power and jurisdiction. In supervising and regulating long-distance telecommunications corporations, the commission shall encourage competition and growth in the telecommunications industry and promote economic development and investment in new telecommunications technologies, infrastructure and services. In furtherance of this policy, the commission shall establish procedures and standards for identifying and regulating competitive long-distance telecommunications markets. When the commission determines that a long-distance telecommunications market is competitive, it shall establish appropriate supervisory and regulatory treatment for competitive long-distance telecommunications markets as distinguished from noncompetitive telecommunications markets.

B. A public service corporation shall comply with every order, decision, rule or regulation made by the commission in any matter relating to or affecting its business as a public service corporation, and shall do everything necessary to secure compliance with and observance of every such order, decision, rule or regulation.

Amended by Laws 1993, Ch. 94, § 1.

Failure of Conditional Enactment

*Laws 1985, Ch. 304, § 3 conditionally amended this section (see Main Volume). For conditional enactment provision and information as to the nonoccurrence of the condition, see Historical Note following § 40-201.*

## Historical and Statutory Notes

## 1993 Reviser's Note:

Pursuant to authority of § 41-1304.02, "Supervising and regulating public service corporations; telecommunications promotion; duty to comply"

was substituted for the previous section heading and in subsection A the spelling of "long-distance" was corrected in four places and the spelling of "noncompetitive" was corrected.

## United States Supreme Court

Preemption, issuance of securities by natural gas companies, see *Schneidewind v. ANR Pipeline Co.*, 1988, 108 S.Ct. 1145, 485 U.S. 293, 99 L.Ed.2d 316.

## Notes of Decisions

## Antitrust immunity 13

## 2. In general

Corporation Commission's power to prescribe rates for public service corporation is exclusive and cannot be interfered with by legislature, courts, or executive branch of state government. *Pueblo Del Sol Water Co. v. Arizona Corp. Com'n* (App.1988) 160 Ariz. 285, 772 P.2d 1138.

## 13. Antitrust immunity

Cellular telephone company's setting of wholesale prices with approval of Arizona Corporation

Commission was immune from antitrust liability, even if prices were so high as to preclude resellers from making profit, where scheme under § 40-202 and Const. Art. 15, § 3 set forth policy to displace competition with regulation, and Commission took into account effect of regulated wholesale rates on unregulated retail market; declining to follow *McCaw Personal Communications, Inc. v. Pacific Telesis Group*, 645 F.Supp. 1166 (N.D.Cal.). *Metro Mobile CTS, Inc. v. Newvector Communications, Inc.*, D.Ariz.1987, 661 F.Supp. 1504, affirmed 892 F.2d 62.

§ 40-202.01. Telecommunications corporations; cross-subsidization; prohibition; corporation commission authority to examine books and records

## Failure of Conditional Enactment

*Laws 1985, Ch. 304, § 4 conditionally added this section (see Main Volume). For conditional enactment provision and information as to the nonoccurrence of the condition, see Historical Note following § 40-201.*

§ 40-204. Reports by public service corporations to commission; duty of corporation to deliver documents to commission; confidential nature of information furnished; exception; classification

## Notes of Decisions

Reporting 2  
Validity ½

(App.1987) 155 Ariz. 263, 746 P.2d 4, approved in part, vacated in part on other grounds 157 Ariz. 532, 760 P.2d 532.

## ½. Validity

Public service corporation was not deprived of due process when Arizona Corporation Commission issued order requiring corporation to file monthly reports concerning its past business activities and future plans; notice and opportunity to be heard were not required because reporting order did not adjudicate conflict between corporation and another person, and did not require corporation to alter its finances, property, corporate policies, or management personnel in any significant manner. *Arizona Public Service Co. v. Arizona Corp. Com'n*

## 2. Reporting

Arizona Corporation Commission's order that reorganized public service corporation submit to Commission detailed monthly reports concerning their past business activities and future plans was authorized, reasonable in scope, reasonably articulated, and not unduly intrusive on internal management of public service corporation. *Arizona Public Service Co. v. Arizona Corp. Com'n* (App.1987) 155 Ariz. 263, 746 P.2d 4, approved in part, vacated in part on other grounds 157 Ariz. 532, 760 P.2d 532.

ARTICLE 3. INVESTIGATIONS, HEARINGS AND APPEALS

§ 40-250. Hearing on rate or other change in operations by public service corporation; establishment of rates or other practices by order of commission; rates for telecommunications markets

A. No public service corporation shall raise any rate, fare, toll, rental or charge, or alter any classification, contract, practice, rule or regulation to result in any increase thereof, except upon a showing before the commission and a finding by the commission that an increase is justified. The showing before the commission by a public service corporation with gross operating revenues derived from intrastate operations of less than two hundred fifty thousand dollars, including the requested rate relief, by a telecommunications corporation or by a member-owned nonprofit cooperative corporation may be made with or without a hearing as determined by order or rule of the commission.

B. When there is filed with the commission any schedule stating an individual or joint rate, fare, toll, rental, charge, classification, contract, practice, rule or regulation not increasing or resulting in an increase, the commission may, without answer or other pleadings by the interested corporation, but upon reasonable notice, conduct a hearing concerning the propriety of the rate, fare, toll, rental, charge, classification, contract, practice, rule or regulation, and pending the hearing and the decision thereon, it shall not go into effect. The period of suspension thereof shall not extend one hundred twenty days beyond the time when it would otherwise go into effect, unless the commission extends the period of suspension for a further period not exceeding six months.

C. On the hearing the commission shall by order establish the rates, fares, tolls, rentals, charges, classifications, contracts, practices, rules or regulations proposed, in whole or in part, or establish others in lieu thereof, which it finds just and reasonable, and which, if not suspended, shall, on the expiration of thirty days from the time of filing the order, or in such lesser time as the commission grants, become effective and be established, subject to the power of the commission to alter or modify the order.

D. In establishing just and reasonable rates in competitive long-distance telecommunications markets, the commission need not use exclusively the rate of return evaluation traditionally used in establishing rates for noncompetitive telecommunications markets but may consider other factors which the commission deems more appropriate for a long-distance competitive market. The commission may establish a rate for a particular service of a long-distance telecommunication corporation without a hearing and without reviewing all of the rates for all of the long-distance telecommunication corporation's services if the particular service is in a competitive market.

Amended by Laws 1992, Ch. 181, § 1; Laws 1993, Ch. 94, § 2.

Historical and Statutory Notes

1993 Reviser's Note:

Pursuant to authority of § 41-1304.02, in subsection D the spelling of "long-distance" was correct-

ed in four places and the spelling of "noncompetitive" was corrected.

Notes of Decisions

5. Interim rates

When a public service corporation is providing services under rates set in a rate case and found in that case to be just and reasonable, it is not legal for the Corporation Commission, without conduct-

ing a hearing and without determining the fair value of the company's property or rate of return, to declare those rates to be "interim" and subject to refund. Op.Atty.Gen. No. 189-002.

§ 40-250.01. Repealed by Laws 1985, Ch. 321, § 2, effective January 1, 1988

§ 40-251. Hearings on valuation of property of public service corporations; notice; introduction of evidence; written findings of fact required; admissibility in evidence; effect; exception

A. For the purpose of ascertaining matters concerning the valuation or revaluation of the property of public service corporations, the commission may conduct hearings at times or

places it designates. Before any hearing or supplemental or further hearing is had the commission shall give the corporation affected thereby at least thirty days' written notice, specifying the time and place of the hearing, but such notice shall not prevent the commission from making any preliminary examination or investigation into such matters or from inquiring into them in any other investigation or hearing.

B. All corporations affected shall be heard and may introduce evidence at the hearing. The commission may receive evidence from other sources of information. The evidence introduced at the hearing shall be reduced to writing and certified under the seal of the commission. The commission shall make and file its finding of facts in writing upon all matters concerning which evidence is introduced which in its judgment relates to the value of the property.

C. The original or supplemental findings, so made and filed, when properly certified under seal, shall be admissible in evidence in any action, proceeding or hearing before the commission or any court in which the commission, the state, or any officer, department or institution thereof, or any county, city, municipality or other body politic, and the corporation affected, is interested, whether arising under the provisions of this article or otherwise. Such findings, when received in evidence in any action or proceeding arising under this article, shall be conclusive evidence of the facts therein stated as of the dates therein stated under conditions then existing, and such facts may only be controverted by showing a subsequent change in conditions bearing upon the facts therein determined.

D. Findings made at supplemental hearings or investigations shall be considered in connection with and as a part of the original findings except insofar as the supplemental findings change or modify the findings made at the original hearing or investigation.

E. For purposes of this section, the commission may establish simplified procedures and may by order or rule dispense with a hearing for a telecommunications corporation or a member-owned nonprofit cooperative corporation.

Amended by Laws 1992, Ch. 181, § 2.

#### Historical and Statutory Notes

##### 1992 Reviser's Note:

Pursuant to authority of § 41-1304.02, in subsection E the comma following "member-owned" was transposed to follow "section".

#### § 40-253. Application for rehearing; hearing; effect; decision

##### Administrative Code References

Rules of practice and procedure, corporation commission, see A.A.C. R14-3-106 et seq.

#### § 40-254. Action to set aside or modify certain orders of commission; filing; limitation; superior court

A. Except as provided in § 40-254.01, any party in interest, or the attorney general on behalf of the state, being dissatisfied with an order or decision of the commission, may within thirty days after a rehearing is denied or granted, and not afterwards, commence an action in the superior court in the county in which the commission has its office, against the commission as defendant, to vacate, set aside, affirm in part, reverse in part or remand with instructions to the commission such order or decision on the ground that the valuation, rate, joint rate, toll, fare, charge or finding, rule, classification or schedule, practice, demand, requirement, act or service provided in the order or decision is unlawful, or that any rule, practice, act or service provided in the order is unreasonable. The answer of the commission shall be served and filed within twenty days after service of the complaint, whereupon the action shall be at issue and ready for trial upon ten days' notice to either party. The action shall be tried and determined as other civil actions except as provided in this section.

P If the commission rescinds the order complained of, the action shall be dismissed, and if the commission alters, modifies or amends the order, the altered, modified or amended



order shall replace the original order complained of, and judgment shall be given thereon as though made by the commission in the first instance.

C. The trial shall conform, as nearly as possible, and except as otherwise prescribed by this section, to other trials in civil actions. Judgment shall be given affirming, modifying or setting aside the original or amended order.

D. Either party to the action, or the attorney general on behalf of the state, within thirty days after the judgment of the superior court is given, may appeal to the supreme court.

E. In all trials, actions and proceedings the burden of proof shall be upon the party adverse to the commission or seeking to vacate or set aside any determination or order of the commission to show by clear and satisfactory evidence that it is unreasonable or unlawful.

F. Except as provided by this section no court of this state shall have jurisdiction to enjoin, restrain, suspend, delay or review any order or decision of the commission, or to enjoin, restrain or interfere with the commission in the performance of its official duties, and the rules, orders or decrees fixed by the commission shall remain in force pending the decision of the courts, but a writ of mandamus shall lie from the supreme court to the commission in cases authorized by law.

Amended by Laws 1991, Ch. 247, § 1, eff. Jan. 1, 1992.

#### Historical and Statutory Notes

Laws 1991, Ch. 247, § 5, subsec. B provides: "B. Sections 40-254, 40-406 and 40-464, Arizona Revised Statutes, as amended by this act, are effective from and after December 31, 1991."

#### 1991 Reviser's Note:

Pursuant to authority of section 41-1304.02, "Action to set aside or modify certain orders of com-

mission; filing; limitation; superior court" was substituted for the previous section heading.

#### United States Supreme Court

Preemption, prudence review of public utility nuclear power investments, pass through of federally mandated wholesale rates, see Mississippi

Power & Light v. Mississippi ex rel. Moore, 1988, 108 S.Ct. 2428, 487 U.S. 354, 101 L.Ed.2d 322.

#### Notes of Decisions

Expertise of administrative body 27.5

#### 27.5. Expertise of administrative body

Interpretation of technical terms and provisions in public utilities rate schedules is peculiarly within

realm of expertise of Corporation Commission, and courts will sustain Commission's ruling on meaning of such technical rates schedules where decision is based upon reasonable interpretation of the instrument. Marco Crane and Rigging v. Arizona Corp. Com'n (App.1987) 155 Ariz. 292, 746 P.2d 33.

#### § 40-254.01. Action to set aside or modify certain commission orders; limitation; court of appeals

A. The attorney general on behalf of the state or any party to a proceeding before the commission who is dissatisfied with any order of the commission involving public service corporations and relating to rate making or rate design pursuant to §§ 40-243, 40-246, 40-250 and 40-251 may file within thirty days after a rehearing is denied or granted, and not afterwards, a notice of appeal in the court of appeals to vacate, set aside, affirm in part, reverse in part or remand with instructions to the commission the order if the court of appeals determines upon a clear and satisfactory showing that the order is unlawful or unreasonable.

B. If the commission rescinds the order complained of, the action shall be dismissed, and if the commission alters, modifies or amends the order, the altered, modified or amended order shall replace the original order complained of, and judgment shall be given thereon as though made by the commission in the first instance.

C. The appellate procedure shall be pursuant to rules adopted by the supreme court. The rules shall conform, as nearly as possible, to the manner in which other appeals are